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5-28-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Ferdinand Engel
Serial No. : 09/401,874
Filed : September 23, 1999
Title : IDENTIFYING A FAILED DEVICE IN A NETWORK

Art Unit : 2184
Examiner : D. Le

Assistant Commissioner for Patents
Washington, D.C. 20231

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TC 2100 MAILROOM

RESPONSE

In the Action mailed 12/06/00, the Examiner rejected claims 1-31 under 35 U.S.C. §103(a) as being unpatentable over U.S. 5,157,667 (Carusone).

Applicant submits that claims 1-10 are patentable over Carusone because, contrary to what the Examiner appears to believe, Carusone neither discloses nor suggests "attempting to communicate with a target device," as claim 1 requires.

The Examiner admits that "Carusone does not explicitly teach... a device as a target device." The Examiner suggests Carusone's "central service processor (i.e., target device)" as a substitute. In support, the Examiner points a passage in Carusone which begins:

Furthermore, according to the invention, whenever a failure occurs, failure reports are sent by each unit that observes the failure, to a central location. For the sake of illustration, service processor 272 could be designated as the central location.
(Col. 9, lines 33-35)

Applicant disagrees with the Examiner's substitution. The passage makes clear that the central service processor cannot be the "target device". The "target device" is potentially being identified as a failed device. If the central service processor is a failed device, Carusone's system will not work since it is the central location which analyzes data to identify failed devices.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

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We further note that in spite of what the Examiner believes, Carusone does not teach or suggest "attempting to communicate with a target device", as is also required by claim 1. Carusone teaches "using a centrally based mechanism responsive to error reports" (col. 4, lines 44-45, emphasis added). These error reports are elicited by observed failures within devices: "whenever a failure occurs, failure reports are sent by each unit that observes the failure, to a central location" (col. 9, lines 33-35, emphasis added). There is nothing in Carusone which suggests that an error report is generated in response to an "attempt to communicate" which "fails", as required by claim 1. In addition, the service processor in the Carusone system never attempts to communicate with a target device as part of an effort to identify failed devices. The service processor simply analyzes error reports sent to it by units distributed over the network.

Moreover, there is no device in Carusone's system which reacts to a failed attempt to communicate with a target device by then "determining if the target device has an active neighbor" and then "identifying the target device as a failed device if the target has an active neighbor," as required by claim 1. The Examiner points to passages in Carusone as supposedly indicatory to the contrary. But we read those passages as indicating that Carusone's system receives error reports from all units that observe an error and then analyzes the reports to identify what caused the error. We could find no indication that the service processor tries to determine if the target device as an active neighbor and then identifies the target device as a failed device if it does have an active neighbor.

The two other independent claims are patentable over Carusone for at least the same reasons that claim 1 is.

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Attorney's Docket No.: 00124-024001

Applicant asks that all claims be allowed. Enclosed is a Petition for Extension of Time for Two Months with the required fee of \$390. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

May 7, 2001



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